

EDPS Formal comments on a draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) 2023/956 of the European Parliament and of the Council as the conditions and procedures related to the status of authorised CBAM declarant

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 8 November 2024, the European Commission consulted the EDPS on a draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) 2023/956² of the European Parliament and of the Council as regards the conditions and procedures related to the status of authorised CBAM declarant ('the draft Implementing Regulation').
2. Regulation (EU) 2023/956 lays down the rules for the submission of the application to become an authorised CBAM declarant (the 'application') and sets out the criteria and procedures for granting such authorisation.
3. The objective of the draft Implementing Regulation is to lay down the rules for the submission of the application and for the authorisation procedure.
4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in recital 19 of the draft Implementing Regulation.

¹ OJ L 295, 21.11.2018, p. 39.

² Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, OJ L 130, 16.5.2023, p. 52–104.

5. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts³.
6. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR and are limited to the provisions of the draft Implementing Regulation that are relevant from a data protection perspective.

2. Comments

7. The EDPS welcomes that the draft Implementing Regulation clearly specifies the purpose of personal data processing. In particular, the draft Implementing Regulation explicitly provides that the personal data specified in this Regulation and registered in the CBAM registry should be processed for the purposes of measures related to the granting and revocation of the status of authorised CBAM declarant⁴⁵.
8. Regarding the categories of personal data to be processed, the EDPS notes that Article 5 of the Regulation (EU) 2023/956 enumerates the information about the applicant that should be included in the application⁶. In addition, Article 17(4) of Regulation (EU) 2023/956 and the Annex to the draft Implementing Regulation specify the content of the decision of the competent authority granting the status of authorized CBAM declarant.

³ In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

⁴ The EDPS recalls that pursuant to the purpose limitation principle, personal data should only be collected for specified, explicit, and legitimate purposes and not further processed in a manner that is incompatible with those purposes (Article 5(1) (e) of the GDPR).

⁵ Article 28 and Recital 18 of draft Implementing Regulation

⁶ Article 5 of the Regulation (EU) 2023/956 states that : *'The application for an authorisation shall include the following information about the applicant:*

(a) name, address and contact information;

(b) EORI number;

(c) main economic activity carried out in the Union;

(d) certification by the tax authority in the Member State where the applicant is established that the applicant is not subject to an outstanding recovery order for national tax debts;

(e) declaration of honour that the applicant was not involved in any serious infringements or repeated infringements of customs legislation, taxation rules or market abuse rules during the five years preceding the year of the application, including that it has no record of serious criminal offences relating to its economic activity;

(f) information necessary to demonstrate the applicant's financial and operational capacity to fulfil its obligations under this Regulation and, if decided by the competent authority on the basis of a risk assessment, supporting documents confirming that information, such as the profit and loss account and the balance sheet for up to the last three financial years for which the accounts were closed;

(g) estimated monetary value and volume of imports of goods into the customs territory of the Union by type of goods, for the calendar year during which the application is submitted, and for the following calendar year;

(h) names and contact information of the persons on behalf of whom the applicant is acting, if applicable.'

9. Article 17(2) of Regulation 2023/956 provides, among the criteria for granting the status of authorised CBAM declarant, that the applicant has not been involved in a serious infringement or in repeated infringements of customs legislation, taxation rules, market abuse rules or this Regulation and delegated and implementing acts adopted under this Regulation, and in particular the applicant has no record of serious criminal offences relating to its economic activity during the five years preceding the application.
10. Against this background, Article 10 of the draft Implementing Regulation provides for an exchange of personal data concerning serious or repeated infringements within the meaning of Article 17(2)(a) of Regulation 2023/956. The EDPS welcomes Recital 18 of the draft Implementing Regulation, which recalls the need for appropriate safeguards to protect the data subjects' rights when it is necessary to process personal data relating to criminal convictions and offences. The EDPS also welcomes the specific safeguards provided by the draft Implementing Regulation, which include the requirement for the competent authority to record the reason of request, to limit access to persons who are responsible in that competent authority for carrying out the assessment of serious or repeated infringements and to no longer retain the criminal record or any other document accepted under national law as criminal record after the decision to grant or to refuse authorisation has been made⁷.
11. Furthermore, the EDPS also positively notes that the draft Implementing Regulation specifies that no special categories of data, as defined in Article 9 of the GDPR⁸ and Article 10 of the EUDPR, should be recorded for the purpose of applying for and granting of the status of authorised CBAM declarant.
12. Finally, the EDPS welcomes that the draft Implementing Regulation contains a clear allocation of the role of the competent authority as controller. In particular, the draft Implementing Regulation indicates that the competent authority granting or revoking the status of authorised CBAM declarant should be regarded as controller within the meaning of Article 4(7) of the GDPR.

Brussels, 27 November 2024

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁷ Article 13 of the Regulation (EU) 2023/956 already provides for a requirement of professional secrecy.

⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.